IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

CHRISTIE L. HYNSON,	)	
	)	
Defendant Below, Appellant,	)	
	)	
v.	)	C.A. No. 2006-02-389
	)	
CARMON LINCOLN MERCURY,	)	
	)	
Plaintiff Below, Appellee.	)	

Submitted: June 27, 2006
Decided: July 26, 2006

Bernard George Conaway, Esquire
Fox Rothschild LLP
919 N. Market Street, Suite 1300
P.O. Box 2323
Wilmington, DE 19899-2323
Attorney for Appellant

Kevin Guerke, Esquire
Seitz, Van Ogtrop & Green
222 Delaware Avenue, Suite 1500
P.O. Box 68
Wilmington, DE 19899
Attorney for Appellee

FINAL OPINION AND ORDER ON APPELLEE'S MOTION TO DISMISS

This is an appeal by defendant below-appellant Christie Hynson ("Hynson") from the Justice of the Peace Court pursuant to 10 *Del. C.* § 9571. The Justice of the Peace Court entered judgment against defendant on February 15, 2006 and this appeal was filed on February 27, 2006; therefore it is timely. Plaintiff below-appellee Carman Ford[1] moved to dismiss for lack of jurisdiction. Carman Ford, in support of their motion, argues that this Court lacks subject matter jurisdiction to hear this appeal because Hynson

[1] Although Carman Ford was the plaintiff below, Hynson listed the appellee as "Carmon Lincoln Mercury." Furthermore, Hynson addressed service to 193 S. DuPont Highway, the address of Lincoln Mercury of New Castle. Lincoln Mercury of New Castle and Carman Ford, in addition to Carman Dodge, are members of "the Carman Group" located next door to one another at 189, 193 and 196 S. DuPont Highway. Carman Lincoln Mercury is also a member of the Carman group, located at 3420 Kirkwood Highway, in addition to The Carman Collision Center, located at 193 S. DuPont Highway.

failed to name the identical parties below, in violation of Court of Common Pleas Rule 72.3(c). On June 30, 2006, following a hearing on Carman Ford's motion to dismiss, the Court reserved decision. This is the Court's decision and order on Carman Ford's motion to dismiss.

FACTS

On September 30, 2005 Hynson took her Lincoln LS to Carman Ford for repairs and was given a Ford Taurus loaner vehicle. While in Hynson's possession, the loaner vehicle was damaged. Hynson contacted Steve Hudson ("Hudson") from Carman Ford Service Department and Hudson asked her to bring the vehicle in for inspection. After inspecting the damages, Hudson deemed the vehicle unsafe to operate. Hynson was subsequently charged $2,574.32 for the damages, but refused to pay.

On November 14, 2005, Carman Ford filed an action against Hynson in Justice of the Peace Court No. 12. and the court entered judgment[2] for Carman Ford in the amount of $2,574.32.

On February 27, 2006, Hynson filed an appeal of the judgment below. Although the certified copy of the record listed the plaintiff below as "Carman Ford" at "193 S. DuPont Highway," Hynson's handwritten *praecipe* listed the defendant below as "Carmon [sic] Lincoln Mercury" at "189 S. DuPont Highway." Carman Ford has not filed a responsive pleading, but instead moves to dismiss for lack of jurisdiction, pursuant to Rule 72.3(c), on the ground Hynson named a party that was not named in the action below. Carman Ford argues that both dealerships are individually incorporated with non-interlocking boards and different registered agents, and therefore cannot be considered

[2] The order of The Justice of the Peace Court dated February 15, 2006 which entered the judgment indicates "Carman Ford vs. Christie Hunson" [sic].

identical.

Hynson argues that because the Carman Group holds itself out to the public and operates as a single entity, the corporations are effectively identical, and furthermore no individual corporation would sustain any unfair prejudice as a result of the litigation.

ANALYSIS

Rule 72.3 was amended, following a decision of the Supreme Court, in *Fossett v. Dalco Construction Co.*, 2004 WL 1965141 (Del. Supr. 2004). Prior to *Fossett*, the mirror image rule was strictly applied to deny jurisdiction in *de novo* appeals if the parties and issues were not presented precisely as they were in the court below. See *McDowell v. Simpson*, 1 Houst. 467 (Del. Super. 1857); *Cooper's Home Furnish., Inc. v. Smith*, 250 A.2d 507 (Del. Super. 1969); *Sulla v. Quillen*, 1987 WL 18425 (Del. Super.). Prior to *Fossett*, exceptions to the mirror image rule were only granted on rare occasions when the correct party was named, but spelled incorrectly. See, e.g., *Freedman v. Aronoff*, 1994 WL 555429 (Del. Super.); *Freibott v. Patterson Schwartz, Inc.*, 740 A.2d 4 (Del. Super., 1994).

In *Fossett*, the Supreme Court did not rule on the proper application of the mirror image rule, but rather upheld the Superior Court's strict application of the rule as consistent with past Superior Court precedent. *Fossett* at *2. The Supreme Court then directed the Court of Common Pleas to determine whether the rule had continued efficacy. *Id*. If the Court found the rule had continued efficacy, the Court was instructed to formally adopt a civil rule codifying the mirror image rule. *Id*. One month after *Fossett* was decided, and before the Court of Common Pleas promulgated the existing rule, the Superior Court decided *Pavetto v. Hansen*, 2004 WL 2419164 (Del. Super.) In

Pavetto, the Superior Court held that "absent good reason, such as actual or potential prejudice as a result of noncompliance, the [mirror image] rule should not be applied to preclude a court from possessing subject matter jurisdiction." 2004 WL 2419164 (Del. Super.). This cannot be considered the prevailing view after the Supreme Court's decision in Fossett. Additionally, on November 29, 2004 Rule 72.3 was amended to include paragraph (c), which states "[a]n appeal to this court that fails to join the identical parties and raise the same issues that were before the court below shall result in a dismissal on jurisdictional grounds." CCP Civil Rule 72.3(c). From September 29, 2004 to November 28, 2004, the application of the mirror image rule described in *Pavetto* would have binding on this Court. Now, however, Rule 72.3(c) governs the current application of the mirror image rule because the amendment was formulated pursuant to the Supreme Court's general supervisory authority over the rule-making power of the trial courts (Del. Const. art. IV § 13).

Upon promulgation of Civil Rule 72.3(c), this Court does not engage in analysis to determine if the case should be heard on its merits. Therefore, any consideration turns to whether Hynson correctly identified the proper party below as required by Rule 72.3(c). Hynson argues that "Carman Ford holds itself out to the public as at least three separate entities of which Carman Ford and Carman Lincoln Mercury are two of those entities." Hynson seems to be arguing that Carman Ford, or possibly the Carman Group, operates as a single entity and therefore the individual corporations that make up the entity may be sued interchangeably. This Court finds no case law to support such an argument. Rather, under Delaware law, one company may only be sued for the actions of another when the company being sued exhibits actual, participatory, and total control of

the other company. See *J.E. Rhoads & Sons, Inc. v. Ammeraal, Inc.*, 1988 WL 32012 (Del.Super.). There is no evidence in the record to suggest that any part of the Carman Group was under the total control of another part. Therefore, Carman Ford and Carman Lincoln Mercury cannot be considered identical simply because of their mutual membership in the Carman Group.

This Court notes that this is not a case where there were multiple parties below or a grammatical error in one of the party's names. This case involves a single plaintiff and a single defendant where Hynson has simply failed to name the party that sued her in the proceeding below. The Supreme Court directed this Court to implement Rule 72.3(c) for the purpose of providing sufficient notice that failure to name the identical parties below will result in dismissal. *Fosset* at *2. Hynson had sufficient notice of the consequences of naming the wrong party, yet inexplicably filed suit against a different corporation at a different address. As a result, I find that Hynson failed to name the identical parties below, thereby depriving this Court of jurisdiction over the appeal.

Appellant also argues that the Court of Common Pleas, by amending Rule 72.3 to deny jurisdiction where the identical parties and issues are not named on appeal, has exceeded its rule-making authority. There is no basis for this argument. The provision of 10 *Del. C.* § 1324 "General Powers of the Court" grants this Court rule making authority. Additionally, the Delaware Constitution grants this Court, subject to the supervisory powers of the Supreme Court, authority to adopt rules of pleading practice and procedures. Del. Const. Art. IV, §13.

Order

For the reasons stated herein, Carman Ford's motion to dismiss the appeal is hereby GRANTED.

So Ordered this 26th day of July, 2006

_____

Alex J. Smalls
Chief Judge

cc: Justice of the Peace Court #12

Hynson-OP Jul 06